

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING

IN THE MATTER OF THE LICENSE OF : Administrative Action
: :
: :
ANDREA L. OLIVER, RN, APN :
formerly ANDREA L. SCHLEMBACH :
RN # 26NO12441800 : FINAL ORDER
APN # 26NJ00098900 : OF DISCIPLINE
: :
TO PRACTICE NURSING IN THE :
STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Nursing ("Board") upon receipt of information which the Board has reviewed and upon which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Andrea L. Oliver¹ ("Respondent") is a Registered Professional Nurse (RN) and an Advanced Practice Nurse (APN) in

¹Pursuant to Respondent's request, Board records were updated with Respondent's name change from Andrea L. Schlembach to Andrea L. Oliver on March 7, 2016 due to marriage.

the State of New Jersey, and has been a licensee at all times relevant hereto.

2. On November 5, 2012, a Consent Order was filed requiring Respondent to enroll in the Professional Assistance Program of New Jersey (PAP), subsequent to two arrests in 2012 on charges relating to prescription fraud. The Order indicates that the conduct that led to Respondent's arrests involved writing prescriptions for her own use.

3. The 2012 Consent Order required Respondent, among other things, to provide a copy of the Order to each employer representative or supervisor.

4. Respondent began working at Seacrest Village, a facility at Little Egg Harbor, New Jersey, in June of 2013. She informed the facility of her involvement with the PAP, but she at no time made representatives of the facility aware of the existence of the Consent Order. Respondent indicated in a sworn statement that she was unaware of the requirement in the Consent Order, although she had signed that order.

5. Anupama J. Rao, M.D., entered into a collaborative agreement with Respondent in June of 2013.

6. In July of 2014, Dr. Rao was made aware that a refill for a phentermine (Schedule IV, Controlled Substance Act) prescription had been "called in" under his name by Respondent for an individual named A.B., who was not his patient.

Respondent used Dr. Rao's DEA number and office address, without his knowledge or permission. Dr. Rao was advised that the pharmacist had run a PMP report and discovered that the patient was using multiple pharmacies for phentermine prescriptions, all called in under Dr. Rao's name. Dr. Rao then ran a PMP report for the last twelve months, from August 1, 2013 through August 1, 2014 (approximately) and found that there were also prescriptions supposedly authorized under his name for V.L., N.V., Andrea Schlembach, and A.G. None of these persons were Dr. Rao's office patients, and Dr. Rao had authorized none of these prescriptions. Dr. Rao and his office staff contacted the pharmacies involved, and ascertained that the prescriptions in question were mostly "call ins" by Respondent Andrea Schlembach, with the exception of one prescription in the name of V.L. dated November 29, 2013.

7. Respondent admitted that she wrote prescriptions for phentermine, a Schedule IV Controlled Substance weight loss medication, for staff members of Seacrest Village and for herself, using Dr. Rao's pre-signed prescriptions, but unbeknownst to Dr. Rao.

CONCLUSIONS OF LAW

1. Respondent's failure to provide her employer with a copy of the 2012 consent order constitutes a failure to comply with a Board order in violation of N.J.A.C. 13:45C-1.4,

subjecting Respondent to sanctions pursuant to N.J.S.A. 45:1-21(e).

2. Respondent's calling-in multiple prescriptions for phentermine (a Schedule IV Controlled Substance) using Dr. Rao's name and DEA number, without Dr. Rao's knowledge or authorization, constitutes a deceptive practice in violation of N.J.S.A. 45:1-21(b), as well as professional misconduct in violation of N.J.S.A. 45:1-21(e).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline seeking a three year suspension and five thousand dollar (\$5000) civil penalty was entered on December 15, 2015. Copies were served upon Respondent via regular and certified mail. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the thirtieth day following entry unless Respondent requested a modification or dismissal of the stated findings of fact and conclusions of law by setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

Respondent timely replied to the Provisional Order of Discipline by providing multiple submissions. At the outset,

the Board notes that Respondent's 2012 Consent Order involved conduct whereby Respondent wrote prescriptions that she was not authorized to write and had other people fill those prescriptions. In 2014, Respondent was terminated from nursing employment for similar conduct - writing prescriptions that she was not authorized to write and having other people fill those prescriptions. As such, Respondent has engaged in repeat conduct and is subject to enhanced penalties pursuant to N.J.S.A. 45:1-25. Additionally, there are two issues to be addressed: 1) Respondent's recovery from substance abuse, and 2) Respondent's deceptive, unprofessional conduct. The POD seeks discipline for Respondent's repeated deceptive, unprofessional conduct, but Respondent's multiple replies focus on her recovery.

PAP submitted a letter addressing Respondent's recovery and does not address Respondent's deceptive, unprofessional conduct. PAP indicated that Respondent had stopped practicing and mailed her RN license and APN certificate to the Board in July or August 2014, which were mailed back to her in September 2014 and June 2015 respectively. PAP maintained that Respondent was compliant with the program, in documented recovery for three years (since January 2013), and that any suspension of her license should be stayed and served as a period of probation. PAP's submission, however, does not address Respondent's

violation of the Consent Order, or the out of scope prescribing that she committed from November 2013 through July 2014 while she was in -- according to PAP -- documented recovery.

Respondent may have been in recovery from her substance abuse, but she was engaging in deceptive and unprofessional conduct at the same time, which is deserving of discipline.

The first submission from Respondent's attorney argues that Respondent relied on PAP's suggestion of when to stop working and when to return to practice and that the time that she was not working should be counted towards her suspension.

Respondent ceased practicing in accordance with PAP's advice, at two separate times. The first cessation was after her 2012 arrests for writing prescriptions that she was not allowed to write and having them filled by other people so that she could obtain more drugs for herself. Respondent maintains that she stopped practicing from November 2012 - April 2013. This was part of her road to recovery; it was not discipline imposed by the Board. The second time Respondent ceased practice was after her termination from employment for writing prescriptions beyond the scope of her practice and having them filled by other people. Respondent maintains that PAP advised her in July 2014 to stop working. Again, this was part of her recovery; it was not discipline imposed by the Board. Respondent mailed her licenses to the Board in August 2014 and believed that she had

voluntarily surrendered them. The Board's records, however, indicate that Respondent's RN license and APN certification were "active" at all times relevant; the status of her license and certification were never "voluntary surrender" or "inactive."

In October 2014, approximately two months after she stopped practicing and mailed her RN license and APN certificate to the Board at the behest of PAP, Respondent returned to the practice of nursing and obtained employment with Physicians Choice Dialysis. She maintains that she provided that employer with a copy of the 2012 Consent Order, but has not provided any documentation to support her statement. She worked there as a nurse for an undisclosed period of time, presumably less than one year, and suggests that she left that job in good standing.

In October 2015, Respondent obtained nursing employment with CompleteCare Health Network as an APN. She has provided documentation indicating that she showed CompleteCare the 2012 Consent Order. She has not provided any documentation indicating that she disclosed her 2014 termination from Seacrest Village or the reasons therefore. CompleteCare's application for employment, as provided by Respondent, did not ask for information about previous employment or termination from previous employment. There is no indication that Respondent disclosed that she had been terminated from Seacrest Village for unauthorized prescriptive practice and the submissions from

CompleteCare are silent on the issue, leading the Board to believe that CompleteCare was unaware of Respondent's second instance of inappropriate prescription writing. Seemingly without this knowledge, CompleteCare has indicated that they wish to maintain Respondent's employment and would face difficulty finding another practitioner to fill her position.

Respondent argues that she believed that she voluntarily surrendered her license and that the two months she stopped working as an RN and the ten months she stopped working as an APN should retroactively be deemed a voluntary surrender by the Board. Although Respondent takes this position in her reply to the POD, she submitted evidence indicating that she knew her license was not voluntarily surrendered at any point. When Respondent applied for reinstatement of her CDS (Controlled Dangerous Substance) registration/DEA (Drug Enforcement Agency) number in August 2015, she was asked the following question: "[H]ave you been permitted to surrender or otherwise relinquish your professional license to avoid an inquiry or investigation in New Jersey, any other state, the District of Columbia, or in any other jurisdiction?" Respondent answered "no" and signed her name indicating that the answer was true and complete.

Respondent argues that the suspension of her license would impact her ability to support her family. A family friend of Respondent wrote on January 29, 2016 that Respondent is a single

parent supporting three children and acknowledges the mistakes that she made regarding her substance abuse and first instance of unauthorized prescriptive writing. The letter is silent as to Respondent's recent marriage which prompted her name change on March 7, 2016, or Respondent's second instance of unauthorized prescription writing while she was in recovery. So too, Respondent's attorney indicated that Respondent was a single parent supporting three children, yet Respondent wrote to the Board seeking a name change as she was recently married in Hawaii.

Lastly, after the Board determined to finalize the Provisional Order without modification, but before the Final Order was drafted, Respondent submitted a petition for reconsideration. She provided the above mentioned letter from CompleteCare which did not indicate that they were aware of her termination from Seacrest Village or the reasons therefore (writing unauthorized prescriptions), but did indicate that they wished to continue to employ Respondent and that they would have a difficult time filling her position if she were suspended. Additionally, in an effort to show the Board that she is taking positive steps, Respondent has switched from PAP to the Board's designated intervention program, the Recovery and Monitoring Program (RAMP) and is committed to an additional five years in that program. Respondent's efforts towards her recovery are

commendable. However, they are part of her recovery and do not address the repeated deceptive, unprofessional conduct in which she engaged. For that, discipline is warranted.

The Board reviewed Respondent's submissions and determined that further proceedings were not necessary. The Board was not persuaded that the submitted materials merited further consideration, as Respondent did not dispute the findings of fact or conclusions of law. Respondent violated the Consent Order by failing to present it to Seacrest Village and engaged in deceptive practices and professional misconduct which led to her termination from Seacrest Village. This Order addresses her conduct, not her impairment. This conduct all occurred after Respondent had been disciplined previously for similar conduct. As a repeat offender, a sanction of a three year active suspension and \$5000 civil penalty is appropriate.

ACCORDINGLY, IT IS on this 05 day of May, 2016,
ORDERED that:

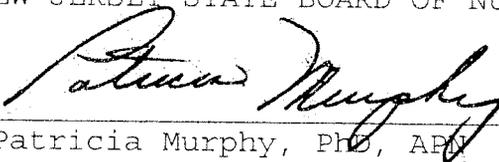
1. Respondent's New Jersey nursing RN license and APN certificate are hereby suspended for a minimum of three years effective thirty (30) days after the date of filing of this Final Order of Discipline. No application for reinstatement shall be entertained until Respondent has appeared before the Board and established that she is fit and competent to resume the practice of nursing.

2. A civil penalty in the amount of five thousand dollars \$5000 is hereby imposed for respondent's violation of N.J.S.A. 45:1-21(b) and (e). Payment shall be made by certified check, bank cashier check, or money order payable to "State of New Jersey," or by wire transfer, direct deposit, or credit card payment delivered or mailed to State Board of Nursing, Attention: Leslie Burgos, P.O. Box 45010, Newark, New Jersey 07101. Any other form of payment will be rejected and will be returned to the party making the payment. Payment shall be made no later than twenty-one (21) days after the date of filing of this Final Order of Discipline. In the event Respondent fails to make a timely payment, a certificate of debt shall be filed in accordance with N.J.S.A. 45:1-24 and the Board may bring such other proceedings as authorized by law. The Board shall not consider any petition for reinstatement unless and until the civil penalty is paid in full.

3. Upon reconsideration, the Board has affirmed its determination.

NEW JERSEY STATE BOARD OF NURSING

By:


Patricia Murphy, PhD, APRN

Board President